

ST 01-33
Tax Type: Sales Tax
Issue: Tangible Personal Property

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 01-ST-0000
v.)	IBT # 0000-0000
)	NTL # 00-00000000000000
ABC, INC.)	
)	
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Richard Kummerer, appearing *pro se*, for ABC, Inc.

Synopsis:

In March of 1998, ABC, Inc. ("taxpayer") sold a boat to a purchaser who lives in Iowa. The taxpayer did not remit retailers' occupation tax (ROT) on the sale because it was an out-of-state purchaser. The Department of Revenue ("Department") sent a questionnaire to the purchaser, who indicated that he picked up the boat in Illinois. As a result of the questionnaire, the Department issued a Notice of Tax Liability to the taxpayer for ROT on the sale. The taxpayer timely protested the Notice. A hearing was held during which the taxpayer argued that the boat was delivered to the purchaser in Iowa, and therefore the tax is not owed. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On March 16, 1998, the taxpayer sold a 1995 Rinker Captiva, which is a boat, to John Doe ("purchaser"), who lives in Iowa. (Dept. Ex. #1, p. 2)
2. The taxpayer filed a Form ST-556, Sales Tax Transaction Return, which indicates that the sale is exempt from taxation because the boat was sold to an out-of-state purchaser. (Dept. Ex. #1, p. 2)

3. On December 6, 2000, the Department sent a questionnaire to the purchaser that asked whether the purchaser picked up the boat in Illinois or had it delivered to him in Iowa. On the questionnaire, the purchaser indicated that he picked up the boat in Illinois. (Dept. Ex. #1, p. 4)

4. On May 2, 2001, the Department issued a Notice of Tax Liability to the taxpayer that shows additional tax due in the amount of \$1,250, plus interest and penalty. A copy of the Notice was admitted into evidence under the certificate of the Director of the Department. (Dept. Ex. #1, p. 6)

5. The taxpayer did not present documentary evidence to support a finding that the boat was delivered in Iowa.

CONCLUSIONS OF LAW:

The Retailers' Occupation Tax Act ("ROTA") (35 ILCS 120/1 *et seq.*) imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2. Section 4 of the ROTA provides that the certified copy of the notice of tax liability issued by the Department "shall be prima facie proof of the correctness of the amount of tax due, as shown therein." 35 ILCS 120/4. Once the Department has established its *prima facie* case by submitting the notice into evidence, the burden shifts to the taxpayer to overcome this presumption of validity. A.R. Barnes & Co. v. Department of Revenue, 173 Ill.App.3d 826, 832 (1st Dist. 1988). To prove its case, a taxpayer must present more than its testimony denying the accuracy of the Department's assessment. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill.App.3d 203, 217 (1st Dist. 1991). The taxpayer must present sufficient documentary evidence to support its claim. Id.

The taxpayer argues that he does not owe ROT on the sale of the boat because the sale qualifies for the interstate commerce exemption. (See 35 ILCS 120/2-60) The Department's regulation concerning sales of property to out-of-state customers provides in part as follows:

"The [ROT] tax does not extend to gross receipts from sales in which the seller is obligated, under the terms of his agreement with the purchaser, to make physical delivery of the goods from a point in this State to a point outside this State, *** provided that such delivery is actually made." 86 Ill.Admin.Code, ch. 1, §130.605(b)

The regulation further provides that the following facts are immaterial: (1) the place at which title to the property passes to the purchaser; (2) the place at which the contract of sale or contract to sell

is negotiated and executed; and (3) the place at which the purchaser resides. (86 Ill.Admin.Code, ch. 1, §130.605(d)). In addition, in order to establish that gross receipts are exempt on the basis of an out-of-state delivery, the seller is required to retain proof that there was such an agreement and a bona fide delivery outside this state. If the delivery is done with the use of the seller's own equipment, then the regulation provides that acceptable proof of the out-of-state delivery would be an affidavit signed by the purchaser showing the name and address of the purchaser and seller and the time and place of the delivery.

The taxpayer did not present sufficient documentary evidence to support his contention. Although the taxpayer presented a letter from the purchaser that indicates that the boat was delivered in Iowa, the letter was not verified and is unacceptable proof of the out-of-state delivery. The taxpayer could have presented an affidavit or a trip sheet or some other document showing the delivery made in Iowa, but failed to do so. Without documentary evidence to substantiate the contention that it was an out-of-state delivery, the Department's determination must be upheld.

Recommendation:

For the foregoing reasons, it is recommended that the Notice of Tax Liability be upheld.

Linda Olivero
Administrative Law Judge

Enter: November 26, 2001